if, as an incident to this change of property and possession, they were used as evidence in a criminal prosecution, it is merely one of the misfortunes of bankruptcy where it follows crime. Nor was this compelling defendant to testify or personally produce his private books and papers in evidence against himself. There was here no violation of the constitutional protection guaranteed under the fourth and fifth amendments. *U. S.* v. *Halstead* (D. C. 1912), *27* A. B. R. 302.

What protection against the use of his books, papers, etc., in the hands of his trustee is afforded a bankrupt in subsequent criminal proceedings against him, has long been a mooted question. The protection given by the Act itself, Section 7 (9), Bankruptcy Act of 1898, extends only to making use of the bankrupt's testimony given before his creditors in subsequent criminal proceedings in Federal Courts. LOVELAND, BANKRUPTCY, p. 644; REMINGTON, § 1557; *In re Nachman,* 114 Fed. 995. But whether or not this protection also extends to State courts is unsettled. *Commonwealth* v. *Ensign,* 40 Pa. Sup. Ct. 157. By Section 70a(1) of the Bankruptcy Act of 1898. the trustee is vested with title to the bankrupt's books, papers, etc., and they pass to him upon adjudication in bankruptcy, and not because of any unreasonable search or seizure in contravention of the fourth amendment. REMINGTON, § 1548; *In re Fixen & Co.,* 96 Fed. 748; *In re Hess,* 134 Fed. 109. The privilege guaranteed under the fifth amendment may be preserved as to the subsequent use of the bankrupt's books in criminal action against him, by properly claiming it at the time of their delivery to his trustee, and making such delivery only upon such conditional order from the Court, assuring him of this protection. COLLIER, Ed. 8, p. 192, Note 143; *In re Hess, supra; In re Tracy & Co.,* 177 Fed. 532; *In re Harris,* 164 Fed. 292; *In re Hark,* 136 Fed. 986; whether he be a voluntary or an involuntary bankrupt. COLLIER, 192; *U. S.* v. *Goldstein,* 132 Fed. 789; *In re Walsh,* 104 Fed. 518; *In re Tracy & Co., supra. Contra*: *In re Sapiro,* 92 Fed. 340. But this privilege is personal, and will be waived unless claimed at the time, and when so waived no objection can be made to prevent the production of the books, papers, records, etc., title to which had passed to the trustee, for use in subsequent criminal proceedings against the bankrupt. REMINGTON, § 1158; *Kerrch* v. *U. S.,* 171 Fed. 366.

BANKRUPTCY—INTEREST—WHEN PAYABLE AFTER DATE OF FILING PETITION AND UP TO DATE OF PAYMENT.—The final report of the trustees of a firm of voluntary bankrupts, showed a large surplus on hand after the payment in full of all debts, with interest thereon to the date of the filing of the petition; *Quaere,* should all of such surplus be returned to the bankrupt, or should it first be applied to the payment of interest which has accrued on claims subsequent to the filing of the petition, and the remainder only be returned to the bankrupt? *Held,* that though the Act makes no provision for repayment to the bankrupt of such a surplus yet it would equitably belong to the bankrupt, and no statute would be necessary to authorize the Court to so direct. As a general rule, such interest only is payable on claims as can be proved at the time of filing the petition, but the bankrupts, invoking equity to obtain

a repayment to themselves of the surplus in the trustee's hands, must do equity, and pay out of that surplus the interest which has accrued on these approved claims between the date of filing the petition and the date of payment of the claims. *Johnson* v. *Norris* (1911) 190 Fed. 459.

The general rule, as is stated in the principal case, is that where property of an insolvent passes into the hands of the Court, subsequently accruing interest is not allowed against the fund. *Thomas* v. *Western Car Co.*, 149 U. S. 95. But reason, equity, the texts, and early decisions furnish ample authority and support of the doctrine established by the principal case, that where the estate is sufficient to treat all equally, after the payment of all claims in full, creditors are entitled to the interest on their claims from the date of the filing of the petition up to the date of payment of the claim. BRANDENBURG, Ed. 3, § 990; LOVELAND, p. 764; *In re Hagan,* Fed. cases 5898; *In re Bank of N. C.,* Fed. Cas. 895; *In re Town,* Fed. Cas. 14112; *In re Strachan,* Fed. Cas. 13519.

BANKS AND BANKING—PAYMENT OF CHECK TO WRONG PERSON—ESTOPPEL.—An imposter was introduced by one W to plaintiff as George Thresh who wanted to procure a loan of money and represented himself as the owner of a farm. Title to the land upon the county records stood in the name of George Thresh. Plaintiff, believing the stranger to be the same Thresh as the owner of the farm, gave him his check and accepted a mortgage as security. Defendant bank, on the identification of W, cashed the check and plaintiff now sues for wrongful payment. *Held,* there being no proof that the name of the person who received payment was not George Thresh, there is no evidence of a forgery, and that plaintiff was estopped by his own lack of caution to demand reimbursement from the bank. *McHenry* v. *Old Citizens Nat. Bank of Zanesville* (Ohio 1911) 97 N. E. 395.

The old theory upon which the drawer of the check under the above facts must suffer the loss was placed upon the ground that the payment of the check to or upon the indorsement of such an imposter, carries out the actual intention with which the drawer issued the check, although that intention was induced by a mistake of fact as to the inposter's identity. *Land Title & Trust Co.* v. *N. W. Nat. Bank,* 196 Pa. 230, 50 L. R. A. 75; and cases cited in note. This rule is repudiated in *Tolman* v. *American Nat. Bank,* 22 R. I. 462, 52 L. R. A. 877, 84 Am. St. Rep. 850. But the adoption of the theory of estoppel in the principal case, instead of that of actual intention, avoids the difficulty of attributing to the drawer an intention that the person to whom he delivers it shall be the payee, notwithstanding that the check itself describes the payee by the name of another person from whom the consideration purports to come. It also avoids the obvious absurdity of imposing the loss upon the drawer where he was completely deceived, and relieving him from it where he was *not* completely deceived, as held in *Dodge* v. *Nat. Ex. Bank,* 30 Ohio 1. The bank must bear the loss where the imposter assumes to be the agent of the payee. *Hauser* v. *Nat. Bank,* 27 Pa. Super. Ct. 613; *Murphy* v. *Met. Nat. Bank,* 191 Mass. 159, 114 Am. St. Rep. 595; *Atlanta Nat. Bank* v. *Burke,* 81 Ga. 597, 2 L. R. A. 96; *Armstrong* v.